

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
New York City District Council of Carpenters Pension Fund,
New York City District Council of Carpenters Welfare Fund,
New York City District Council of Carpenters Annuity Fund,
and New York City District Council of Carpenters
Apprenticeship, Journeyman, Retraining, Educational and
Industry Fund, by their trustees, Frank Spencer, Douglas J.
McCarron, John Ballantyne, Paul Tyznar, Paul O'Brien,
Kevin M. O'Callaghan, Catherine Condon, David Meberg,
Bryan Winter, and John DeLollis,

Plaintiffs,

11Civ 5474 (LBS)

-against-

Michael Forde, John Greaney, Joseph Olivieri, Brian Hayes,
Michael Mitchell, Finbar O'Neill, K.A.F.C.I., Michael Brennan,
Turbo Enterprises, Inc., Terrence Buckley,
Pitchohn Construction Enterprises, Inc., Gerard McEntee,
Pyramid Associates Construction Corp., James Duffy,
EMB Contracting Corp., Michael Batalias, Elisavet Batalias,
Matthew Kelleher, Brian Carson, Joseph Ruocco,
John Stamberger, and Michael Vivenzio,

Defendants.

-----X

DEFENDANT MATTHEW KELLEHER'S
ANSWER TO FIRST AMENDED COMPLAINT

IRVING COHEN, ESQ.
Attorney for Defendant Matthew Kelleher

233 Broadway, Suite 2701
New York, New York 10279
212-964-2544
212-732-1339
icohenlaw@msn.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
New York City District Council of Carpenters Pension Fund,
New York City District Council of Carpenters Welfare Fund,
New York City District Council of Carpenters Annuity Fund,
and New York City District Council of Carpenters
Apprenticeship, Journeyman, Retraining, Educational and
Industry Fund, by their trustees, Frank Spencer, Douglas J.
McCarron, John Ballantyne, Paul Tyznar, Paul O'Brien,
Kevin M. O'Callaghan, Catherine Condon, David Meberg,
Bryan Winter, and John DeLollis,

Plaintiffs,

-against-

Michael Forde, John Greaney, Joseph Olivieri, Brian Hayes,
Michael Mitchell, Finbar O'Neill, K.A.F.C.I., Michael Brennan,
Turbo Enterprises, Inc., Terrence Buckley,
Pitchohn Construction Enterprises, Inc., Gerard McEntee,
Pyramid Associates Construction Corp., James Duffy,
EMB Contracting Corp., Michael Batalias, Elisavet Batalias,
Matthew Kelleher, Brian Carson, Joseph Rocco,
John Stamberger, and Michael Vivenzio,

Defendants.

ANSWER

11 Civ 5474 (LBS)

-----X
Defendant, MATTHEW KELLEHER, by his attorney, Irving Cohen, as and for his
Answer to the First Amended Complaint ("Complaint"), alleges as follows:

1. Denies sufficient knowledge or information to form a belief as to the truth of the
allegations contained within paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,
19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44,
45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60 (a, b, c, d, e and f) 61, 62, 63, 64, 65, 66, 67,
68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93,

94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 141, 142, 143, 144, 145, 146, 147 and 148 of the Complaint, and respectfully refers all questions of law contained within these paragraphs to the Court.

2. Denies the allegations made within paragraphs 47 of the Complaint, and respectfully refers all questions of law contained within these paragraphs to the Court.

3. Admits the allegations contained within paragraphs 56, 99, 138, 139 and 140 of the Complaint, and respectfully refers all questions of law and the CBA contained within these paragraphs to the Court.

ANSWERING THE SECOND CLAIM FOR RELIEF

4. Incorporates by reference the answers previously provided to paragraphs 1 to 148 of the Complaint with respect to the allegations made in paragraph 165 of the Complaint.

5. Denies the allegations contained within paragraphs 166, 167, 168, 169, 170, 171, 172, 173, 174, 175 and 176 of the Complaint, and respectfully refers all questions of law to the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. The Complaint fails to state a claim upon which relief may be granted as to defendant Matthew Kelleher.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. The claims made against defendant Matthew Kelleher in the Complaint are barred, in whole or part, by the Statute of Limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. The claims made against defendant Matthew Kelleher in the Complaint are barred, in whole or part, because of prior proceedings and a judgment of conviction in the United States

District Court which included a payment of restitution.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. Defendant Matthew Kelleher cannot be held jointly and severally liable for the acts of others about which he had no knowledge nor interest in and, therefore, recovery against him for such losses or damages is barred.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. Due to defendant Matthew Kelleher's assistance in the investigation and his cooperation with the prosecuting authorities, the claims against him and any recovery are barred pursuant to principles of equity.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. The claims against defendant Matthew Kelleher are barred by the principle of economic duress.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

12. The claims against defendant Matthew Kelleher are barred by the principles of equitable estoppel.

Defendant Matthew Kelleher reserves the right to raise additional affirmative defenses should they become applicable.

WHEREFORE, defendant Matthew Kelleher demands judgment dismissing the Complaint with costs.

Dated: New York, New York
January 30, 2012

Yours, etc.

IRVING COHEN (3708)
Attorney for Defendant

Matthew Kelleher
233 Broadway, Suite 2701
New York, New York 10279
T: (212) 964-2544
F: (212) 732-1339
icohenlaw@msn.com